

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

RUSLANS BONDARS,

Defendant.

Criminal No. 1:16-cr-228

Hon. Liam O'Grady

Trial Date: May 7, 2017

MOTION IN LIMINE
TO ADMIT CERTAIN BUSINESS RECORDS

The United States respectfully requests that the Court make a pre-trial ruling on admission of certain business records that have been certified in accordance with Federal Rule of Evidence 902(11), as well as records from the Internet Archive that have been certified in accordance with Federal Rule of Evidence 902(11) and 902(13). The government submits that a pre-trial ruling on the admissibility of these documents will significantly reduce the length of trial and conserve the resources of the Court and the parties.¹

Background

The defendant was indicted on four counts: conspiracy to commit computer intrusions; aiding and abetting computer intrusions; conspiracy to commit wire fraud; and aiding and abetting wire fraud. At trial, the government intends to introduce the records described herein. These records were obtained from private businesses pursuant to U.S. legal process and from foreign businesses pursuant to the processes set forth the applicable Mutual Legal Assistance

¹ The government reserves the right to seek admission of any other documents pursuant to these rules that may have been inadvertently left out of this motion.

Treaties. To support the admission of the records created by private entities, the government has obtained certifications complying with Federal Rule of Evidence 902(11) and 18 U.S.C. § 3505, as appropriate, and provided advance notice to the defense of its intentions to use the certifications to authenticate the records described in this filing. Accordingly, pursuant to Federal Rules of Evidence 902(11) the Government moves for admission of the following evidence:

1. **Inbox.lv Evidence:** The Certification from Inbox.lv covers records related to the e-mail accounts **garyaxe@inbox.lv** and **ebaylatvija@inbox.lv**. Records related to **garyaxe@inbox.lv** (GX 4, 37, 80, 81, 82, 86, 87, 89-97, 99, 101, 102, 107, 108, 109, 111, 118, 119, 120, 140, 191) and **ebaylatvija@inbox.lv** (GX 84, 106, 117, 125) include emails sent and received related to the operation of Scan4you and the identity of its administrators and co-conspirators. Attached, as Exhibit 1, is the certificate from Inbox.lv, which complies with Rule 902(11) and 18 U.S.C. § 3505.
2. **Skype Evidence:** The Certification from Skype covers the registration record for the Skype account “beaverma” (GX8). Attached, as Exhibit 2, is the certificate from Skype, which complies with Rule 902(11).
3. **Trend Micro Evidence:** The Certification from Trend Micro covers the Trend Micro User Agreement, Agreement with Virus Total, License and Collaboration Agreement Between Trend Micro and Virus Total (GX 146-148). Attached, as Exhibit 3, is a certificate from Trend Micro, which complies with Rule 902(11).
4. **Norton Antivirus Evidence:** The Certification from Symantec Corporation covers the Norton Antivirus User Agreement (GX 152). Attached, as Exhibit 4, is a certificate from Symantec Corporation, which complies with Rule 902(11).
5. **PayPal Evidence Related to Jurijs Martisevs:** The Certification from PayPal, Inc. covers a PayPal record related to Jurijs Martisevs, specifically a passport record (GX 354). Attached, as Exhibit 6, is the certificate from PayPal, which complies with 18 U.S.C. § 3505.
6. **HostGator Evidence:** The Certification from Endurance International Group covers the HostGator subscriber information pertaining to the Limitless domain (GX 202). Attached, as Exhibit 7, is the certificate from Endurance International Group, which owns HostGator, which complies with Rule 902(11).
7. **GoDaddy Evidence:** The Certification from GoDaddy, Inc., an Internet Service Provider, covers domain name registrations for “scan4you.biz” and “scan4you.net.” (GX 34, 35). Attached, as Exhibit 8, is a certificate from GoDaddy, Inc., which complies with Rule 902(11).

8. **PayPal Evidence Related to Zachary Shames:** The Certification from PayPal, Inc. covers records showing that co-conspirator Zachary Shames paid for access to the SERVICE, which is summarized in GX 192. Attached, as Exhibit 9, is a certificate from PayPal, which complies with Rule 902(11).
9. **Google Subscriber Records Produced June 28, 2016 for Assorted Accounts:** This Certification from Google covers Google subscriber records for bereverovsjurijs796 (GX 72) and garyaxe@inbox.lv (GX 74, 105). Attached, as Exhibit 10, is the certificate from Google, which complies with Rule 902(11).
10. **Google Subscriber Records Produced March 24, 2014 for InfoScan4you:** This Certification from Google covers Google subscriber records for infoscan4you (GX 73, 83). Attached, as Exhibit 11, is the certificate from Google, which complies with Rule 902(11).
11. **Google Records Produced July 11, 2014 for RU12.mob and bereverovsjurijs796:** This Certification from Google covers Google records for bereverovsjurijs796 and RU12.mob (GX 9, 10, 39, 40, 42, 64, 66-68, 70, 76, 242). Attached, as Exhibit 12, is the certificate from Google, which complies with Rule 902(11).
12. **Google Records Produced September 13, 2016 for Garyaxe Account:** This Certification from Google covers Google records for garyaxe15 (GX 110). Attached, as Exhibit 13, is the certificate from Google, which complies with Rule 902(11).
13. **Google Records Produced January 15, 2015 for HFMephobia:** This Certification from Google covers Google records for the Google account HFMephobia (GX 200), which include an e-mail from PayPal to Zachary Shames regarding payments to Scan4you. Attached, as Exhibit 14, is the certificate from Google, which complies with Rule 902(11).
14. **Google Records Produced September 5, 2014 for B0rland7:** This Certification from Google covers Google records for the Google account B0rland7 (GX 38, 69, 71, 79, 161, 163-168, 205, 228, 230, 233, 241). Attached, as Exhibit 14, is the certificate from Google, which complies with Rule 902(11).

Additionally, the government intends to introduce at trial records from the Internet Archive Wayback Machine. These records were obtained from the Internet Archive pursuant to U.S. legal process. To support the admission of the records, the government obtained a certification complying with Federal Rules of Evidence 902(11) and 902(13) and provided advance notice to the defense of its intentions to use the certifications to authenticate the records.

Accordingly, pursuant to Federal Rules of Evidence 902(11) and 902(13), the Government moves for admission of the following evidence:

1. **Internet Archive Evidence:** The Certification from the Internet Archive covers the screenshots of the Scan4you website from the Wayback Machine. Attached, as Exhibit 5, is a certificate from the Internet Archive, which complies with Rules 902(11) and 902(13).

ANALYSIS

I. Certified Business Records from Private Entities are Self-Authenticating Under Rule 902(11)

Under Federal Rule of Evidence 902(11), an original or a copy of a domestic record is self-authenticating and requires no extrinsic evidence of authenticity if it meets the requirements of Rule 803(6)(A)-(C), and is accompanied “by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court.” As stated in the attached certificates, the business records sought to be admitted here meet the requirements of Rule 803(6) because they “were made at or near the time – or from information transmitted by – someone with knowledge; “were kept in the course of a regularly conducted activity of a business, organization, occupation, or calling;” and were made as “a regular practice of that activity.” The government has given the defense reasonable written notice of its intent to offer the evidence that is the subject of this motion and has produced the records to the defense.

II. Certified Records from the Internet Archive are Self-Authenticating Under Rule 902(11) and 902(13).

Under Federal Rule of Evidence 902(13),² certified records generated by an electronic process or system that produces an accurate result are self-authenticating. The Internet Archive’s Wayback Machine documents and stores copies of websites archived at various points in time

² Rule 902(13) states, “A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).”

and allows users to retrieve and view those records, offering a snapshot of the website’s contents at a given point in time. The records are properly authenticated through a certification satisfying Federal Rules of Evidence 901(11) and 902(13); indeed, in a handbook setting out the best practices for authenticating electronic evidence, the authors – including The Honorable Paul W. Grimm, a widely respected authority in the field of electronic evidence – recognized a printout from the Wayback Machine as a means of authenticating website postings and advised, “Under a proposed amendment to the Federal Rules of Evidence, the reliability of the Wayback machine process could be established by a certificate of the Internet Archive official, rather than in-court testimony. *See* Proposed Rule 902(13).” Hon. Paul Grimm, Gregory Joseph & Daniel Capra, *Best Practices for Authenticating Digital Evidence*, pp. 16-17, n. 50, West Academic Publishing (2016). Rule 902(13) went into effect in December 2017. Fed. R. Evid. 902(13).

CONCLUSION

For the reasons stated above, the government respectfully requests that the records discussed herein be admitted under Federal Rules of Evidence 902(11) and 902(13).

Respectfully submitted,

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Date: May 5, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this day, May 5, 2018, I electronically filed the foregoing MOTION IN LIMINE TO ADMIT CERTAIN BUSINESS RECORDS with the Clerk of Court using the CM/ECF system, which will send a notification of that electronic filing (NEF) to counsel of record for the Defendants.

Respectfully submitted,

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